

APPEAL NO. 010669

This appeal arises pursuant to the Texas Workers' Compensation Act, TEX. LAB. CODE ANN. § 401.001 *et seq.* (1989 Act). A contested case hearing was held on March 9, 2001. With regard to the issues before him, the hearing officer determined that the appellant (claimant) was not entitled to supplemental income benefits (SIBs) for the first through fourth quarters nor for the eleventh quarter, and that the claimant has permanently lost entitlement to any additional SIBs. The claimant appeals, essentially contending that the hearing officer's decision is against the great weight and preponderance of the evidence. The respondent (self-insured employer) responds urging affirmance.

DECISION

Affirmed.

The hearing officer determined that the evidence established that the claimant had reached statutory maximum medical improvement on December 8, 1996, and that her impairment rating (IR) was 21%. The hearing officer further determined that the evidence established that the claimant's entitlement to impairment income benefits ended on February 22, 1998, and that the claimant had resumed her regular job and had no loss of earnings until March 6, 2000. Section 408.142(b) provides as follows:

If an employee is not entitled to [SIBs] at the time of payment of the final impairment income benefit because the employee is earning at least 80 percent of the employee's average weekly wage [AWW], the employee may become entitled to [SIBs] at any time within one year after the date the impairment income benefit period ends if:

- (1) the employee earns wages for at least 90 days that are less than 80 percent of the employee's [AWW];
- (2) the employee meets the requirements of Subsections (a)(1), (3), and (4); and
- (3) the decrease in earnings is a direct result of the employee's impairment from the compensable injury. (V.A.C.S. Arts. 8308-4.28(b), (c).)

Thus, the 1989 Act would extend the claimant's possible entitlement to SIBs to February 22, 1999, if she earned wages for at least 90 days that were less than 80% of her AWW. Because the evidence establishes that the claimant had no lost wages until March 6, 2000, Section 408.142(b) of the 1989 Act does not afford her relief.

The claimant was advised by her employer, by letter dated February 16, 2001, that her contract of employment was terminated. Section 408.148 of the 1989 Act provides as follows:

The commission [Texas Workers' Compensation Commission] may reinstate [SIBs] to an employee who is discharged within 12 months of the date of losing entitlement to [SIBs] under Section 408.146(c) if the commission finds that the employee was discharged at that time with the intent to deprive the employee of [SIBs]. (V.A.C.S. Art. 8308-4.28(g).)

The hearing officer determined that the evidence established that the claimant is not entitled to the fourth quarter of SIBs, which ended on February 21, 1999, so her loss of entitlement to SIBs was on that same date. The claimant was not discharged within 12 months of losing entitlement to SIBs.

The hearing officer determined that the claimant is not entitled to SIBs for the eleventh quarter because she was not entitled to SIBs for four consecutive quarters. Section 408.146(c) of the 1989 Act provides that, "an employee who is not entitled to SIBs for 12 consecutive months ceases to be entitled to any additional income benefits for the compensable injury." The claimant lost her entitlement to SIBs for the first four consecutive quarters, or twelve months. The claimant testified that she remained employed, earning at least 80% of her AWW, until March 6, 2000. Consequently, we are satisfied that the hearing officer's decision that the claimant ceases to be entitled to any additional income benefits for the compensable injury is not against the great weight of the evidence. Cain v. Bain, 709 S.W.2d 175, 176 (Tex. 1986).

While the claimant testified that she did not get notice of her IR until February 13, 1999, or notice from the Commission of possible entitlement to SIBs until February 24, 1999, she earned her regular wages during the first four quarters and would have lost future entitlement to SIBs, in any event, based on Section 408.146(c). Accordingly, the decision and order are affirmed.

Philip F. O'Neill
Appeals Judge

CONCUR:

Thomas A. Knapp
Appeals Judge

Michael B. McShane
Appeals Judge